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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,698	12/01/2003	Stephen D. Pacetti	50623.232	3424
<div>7590 Cameron Kerrigan Squire, Sanders &amp; Dempsey L.L.P. Suite 300 One Maritime Plaza San Francisco, CA 94111</div>				
EXAMINER				
NGUYEN, PHU HOANG				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
07/20/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/725,698

**Applicant(s)**

PACETTI, STEPHEN D.

**Examiner**

PHU H. NGUYEN

**Art Unit**

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 76-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 76-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

In view of the Appeal Brief Filed filed on 4/5/2010, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Philip C Tucker/

Supervisory Patent Examiner, Art Unit 1791.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 76-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hijlkema et al. (U.S. Pub. No. 20020143382) in view of Pacetti (U.S. Patent No. 6574497) and Rosenthal et al. (U.S. Pub. No. 2003/0144727) and further in view of Sigma-Aldrich and STN.

Regarding claims 76, 81-82 and 83, Hijlkema (Abstract and paragraphs 6 and 28) discloses a method of making a medical device comprising:

- providing a stent having a coating comprises a polymer,
- positioning the stent on a balloon of a catheter assembly; and
- mounting the stent on the balloon with thermal regulation to increase hardness by crimping.

Hijlkema discloses the coating comprises a polymer (paragraph 21) and a polymer can have a Tg below or above ambient temperature depending on the ambient temperature and the temperature of the existing surface of the coating may be either heated or cooled (paragraph 30) but does not expressly disclose the polymer as poly(vinylidene fluoride-co-hexafluoropropylene), it is well known to use a fluorine containing elastomer such as copolymers of chlorotrifluorethylene and vinylidene fluoride to be affixed to a medical device, for purposes such as imaging as evidenced by Pacetti (column 9, lines 5-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use poly(vinylidene fluoride-co-hexafluoropropylene) to affix to a medical device as taught by Pacetti.

Although the combination of Hijlkema and Pacetti does not disclose the property of the poly(vinylidene fluoride-co-hexafluoropropylene), it is submitted that

poly(vinylidene fluoride-co-hexafluoropropylene) inherently has the claimed properties of glass transition temperature being below room temperature and shore hardness being 60A to 80D or 80A to 60D as evidence by STN (page 3) and Sigma-Aldrich respectively.

Furthermore, Hijlkema discloses increasing the shore hardness of the polymer but does not expressly disclose the percentage of increase. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation (see *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)). Therefore, it would have been obvious to one of ordinary skill in the art to perform routine experimentation results in the claimed range of increase in hardness.

Hijlkema discloses the coatings maybe designed to facilitate the acceptance of the stent into its applied surroundings or to enable the delivery of therapeutic to the lumen and its surroundings (paragraph 5), but does not specify the therapeutic is an antiproliferative drug. However, it is well known in medical devices such as stents for delivering a biologically active material to a desired location within the body of a patient wherein the biologically active material includes agents such as antiproliferative as shown by Rosenthal (paragraphs 1 and 121-126). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the well known biologically active agent for the stent of Hijlkema.

Regarding claims 77-80, Hijlkema teaches dependant upon the ambient temperature, the coating's preexisting temperature and the glass transition temperature of the coating, the temperature of the existing surface of the coating may be either

heated or cooled (paragraph 30), but does not expressly disclose the specific temperature. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation (see *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)). Therefore, it would have been obvious to one of ordinary skill in the art to perform routine experimentation results in the claimed range of temperature.

### ***Response to Arguments***

Applicant's arguments with respect to claims 75-83 have been considered but are moot in view of the new ground(s) of rejection.

It is noticed that paragraph 30 of Hikema teaches cooling, and that after cooling this point is 20 degrees above the T<sub>g</sub>. This clearly indicates that glass temperatures below room are specifically taught by the reference.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHU H. NGUYEN whose telephone number is (571)272-5931. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

P.N 7/3/2010

/Philip C Tucker/  
Supervisory Patent Examiner, Art Unit 1791